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C O N F I D E N T I A L UNVIE VIENNA 000531

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NSC FOR SCHEINMAN, HOLGATE, CONNERY
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GENEVA FOR CD

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TAGS: PREL ENRG KNNP RS IAEA

SUBJECT: IAEA/NUCLEAR FUEL ASSURANCE: RUSSIAN-U.S. JOINT
OUTREACH TO BOARD MEMBERS

REF: A. UNVIE 527
B. STATE 120282

Classified By: Ambassadro Glyn T. Davies, reasons 1.4 (b) and (d)

Strategy for Approving the Angarsk Reserve

¶1. (SBU) Russian IAEA Governor Berdennikov and resident Ambassador Zmeyevskiy hosted Thursday and Friday, November 19 and 20, group meetings to discuss the IAEA Board agenda item "Establishment of a physical reserve of Low Enriched Uranium (LEU) in Russia." Beside U.S. Ambassador Davies (both days), invitees the first day were the heads of mission of Australia, Azerbaijan, China, Japan, ROK, Mongolia, New Zealand, Peru, Turkey, Ukraine and Uruguay. China, Mongolia and Peru were no-shows, although Mongolian Mission called U.S. Mission later for a readout, and Ambassador Davies raised the matter with Peruvian counterpart in a bilateral meeting November 20. On November 20, Canada, Denmark, Germany, Romania, Spain, Switzerland, and the UK participated at ambassador level, France and the Netherlands at DCM/Charge. To all these states, the Russian side put the request to co-sponsor a resolution with which the IAEA Board of Governors would approve the Russian LEU reserve as an IAEA activity and authorize the Director General to enter into the agreements that constitute the deal. (Draft text of the resolution in ref A para 5 and ref B para 6; text of Russia-IAEA and IAEA Model Transfer Agreements contained in IAEA BoG document GOV/2009/76, available to Member States on the IAEA "GOVATOM" web platform.)

¶2. (C) In U.S.-Russian bilateral before the November 19 larger meeting, Berdennikov said there was nothing new in the local situation: a handful of countries were controlling the NAM while most NAM states were "passive and don't care." Russia's aim was to sign up countries in writing to co-sponsor a resolution to approve the LEU reserve. Toward that end, Berdennikov had intended to meet first with the U.S. and its close allies, to get signatures and get some non-provocative state within that group to take on the coordinator role to line up further co-sponsors (likening this approach to Canada's role in the 1995 NPT extension exercise). If Russia gets to 18, 19, or more co-sponsors, Berdennikov said, it would begin showing the evidence to everyone on the Board ("even Cuba") before the Board convenes November 26, with the appeal to opponents and skeptics that they passively permit consensus as an alternative to calling a vote Russia already knows it will win. Without assurance

of winning, however, Berdennikov said Russia would not go forward at this Board. So, enlisting co-sponsors is crucial. Ambassador Davies related briefly the U.S. demarche (we had provided Russian Mission the TPs from STATE 117701 on Monday morning: Berdennikov was aware). Berdennikov said Russia assessed it could just get over 18 with U.S. help, but certainly not without U.S. help.

13. (C) Against this background, Berdennikov was agitated about the constellation of the first group. (Comment: He apparently did not communicate to his mission what he wanted, or they failed to translate it into an invitation to states most apt to be recruited as a stalking horse. Berdennikov contrasted the level of frankness he could use with Australia to that he would use with China. Msnoff pointed out that the EU-plus Canada and Switzerland group scheduled for the second day had the likely candidates for "coordinator" among it; e.g., Australia says openly in WEOG that fuel assurances is not a priority; Japan is wary of loading down Amano's agenda. End Comment.) Ambassador Davies advocated for the meeting with Asia/Pacific, Latin and south and east European states that Berdennikov make a frank presentation on the proposal and take the temperature in the room before raising the procedural issues of a resolution or recruiting co-sponsors. Berdennikov seemed to agree, but in the event he put the question of co-sponsorship to both groups.

Engineering a Consensus

14. (C) Berdennikov opened his November 19 presentation with the following points:

-- We want authorization of the agreements as soon as possible.

-- Proposal agreements take account to the greatest extent possible for comments from other Member States.

-- Proposal requires no change in policy on the part of any country and imposes no expenses to the Agency.

-- The decision to use the reserve would lie exclusively with the IAEA Director General (DG). Neither Russia nor any other state nor the Board would "make the decision" in a given case to effect a transfer. When the GOR receives a request from the DG for transfer of LEU pursuant to the agreements, it would ship LEU to port, "probably St. Petersburg", and transfer title.

-- Responsibility for the material and liability lies with Russia while the material is in Russian territory. (Note: To a subsequent question from New Zealand, Berdennikov elaborated that the agreements strove for the "simplest formula" on liability: Russia would bear liability for material on its territory and aboard ship if the receiving state is not a member of "the appropriate liability conventions," otherwise, the receiving state assumes liability -- implied: upon transfer of title. End Note.)

-- Transfers of LEU will occur at market price prevailing at the moment of transfer, with IAEA taking payment from the receiving state and transferring the funds to Russia.

-- While in Angarsk, the material will be under IAEA safeguards financed by Russia.

As to Board procedure, Berdennikov said,

-- Russia has heard the positions about the proposal and generally about fuel assurances made in the BoG and expressed elsewhere. Russia has also heard some Member States call for the decision on this matter to be made by all Member States in the General Conference. Having heard this call in the past, Russia's Head of Delegation (HOD) at the 2007 General Conference (GC) set out principles for fuel assurance mechanisms, and in 2008 provided more elaboration in the Russian national statement on this proposal; on neither

occasion did a GC discussion of this proposal ensue. To call now for this matter to be subject to GC decision "strikes us as artificial."

-- Proposal is basically an implementation of Statute Article IX (Supplying of materials).

-- Russian wants a consensus decision. To achieve one, Russia was thinking of having a draft resolution proposed by supportive states. We would open it for co-sponsors. We ask all of you to become co-sponsors. If we have a majority as co-sponsors, the chances increase for adoption without a vote.

-- We ask for your support, vote, and co-sponsorship.

15. (SBU) Ambassador Davies asked for the floor and said:

-- U.S. wants to co-sponsor. This is a simple, straightforward, voluntary, cost-free measure.

-- It responds to a call by the DG to set up mechanisms for assured access to fuel that is non-political and not dependent on (a consumer's relations with) any one supplier country.

-- The proposal "empowers the IAEA" and helps deliver on the promise of peaceful uses of nuclear energy.

-- This is a practical idea that does not preclude other proposals from being examined.

Supportive but Uncertain on Recipient Eligibility, No Immediate Co-Sponsors

16. (C) The Russian presentation to the western Europeans plus Canada on November 20 touched on many of the same points, but

Berdennikov began with the observation that, going back to the London Conference in March 2009, India, Pakistan, Brazil and Argentina had made clear they "would not be swayed" to cooperate with Russia on this proposal. He related the 1995 NPT indefinite extension exercise, where "with our Canadian friends" the majority that favored extension had gathered signed commitments to co-sponsor a resolution, and upon exceeding a majority of participating states presented the fact of a majority to the few states opposed to extension. Russia, Berdennikov stated, hoped to achieve consensus adoption of the LEU reserve in the same manner and asked the states present to co-sponsor and help in recruiting others to do so. With the second group as well, Berdennikov noted the compromises Russia had had to strike with the IAEA Secretariat in drafting the agreement texts, and he noted the Secretariat had advised on the resolution language. The agreements were the result of two years of negotiation and were not subject to further change, but Russia was open to any proposals from the floor for editing the resolution to make it easier for those assembled to co-sponsor and/or to make it easier for skeptical states to acquiesce.

17. (C) Ambassador Davies added to the Russian presentation that we supporters of fuel assurances should "test the proposition" that with a robust number of co-sponsors we can avoid a "wasting debate" over the issue. For states that support a strengthened IAEA in all its missions, the transition from ElBaradei to Amano was a good moment to demonstrate an ability to move forward on initiatives that make sense.

18. (C) No state represented either day made a snap commitment to co-sponsor, but nearly all expressed appreciation for Russia's generous offer and general support for its intent and structure. Most questions on substance focused on which states would or would not be eligible to receive LEU. Comments and questions were as follow:

Japan (Ambassador Nakane): We recognize this as the proposal closest to completion and appreciate efforts by Russia and

the Secretariat. Tokyo is studying the draft agreements and is very positive in principle; we have no difficulty to support the substance. The Model Supply Agreement (transfer from IAEA to cut-off state) requires some scrutiny and there may be some room for improvement. We will convey comments from Tokyo to you (Russia) ASAP. (Note: On November 20, Japanese Mission informed us it had been instructed to co-sponsor and we shared this with Russian Mission. Japan will convey technical questions about the agreements to Russians on Monday. End Note.)

Korea (Counselor JK Lee): We have keen interest in the MNA (multinational nuclear arrangements) discussion. The ROK is neither a supplier nor a nuclear newcomer; it currently imports LEU from four countries, including Russia. Seoul is looking at this proposal as a consumer and weighing how this mechanism affects our commercial position. Eager to be positive but need a decision in capital, where serious consideration is underway.

Questions:

-- IAEA Secretariat is developing a broadly similar fuel bank concept spurred by NTI, which will also have to feature a model supply agreement. Russian proposal could itself have a model or template character. How are Member States to "come at" the relationship or differences between the two proposals?
-- "Some non-NPT countries" could be eligible to receive LEU under the Russian proposal. We have no concern but know that others do. We will be prepared for that discussion.

Berdennikov's reply:

-- This proposal is in no competition with other proposals; Moscow has a "favorable view of all the other proposals in one sense or another." The simple fact is that we completed our work first. We weighed whether to wait for all proposals to reach the same level of readiness or could we go forward without detriment to the others; we decided going forward could be helpful to others. We ask that you look at our proposal on its own merits.

-- Eligibility criteria was one of the hardest issues to resolve. We must be guided by Russian law, the IAEA must be guided by the Statute. It was difficult negotiation and the result is a fair one. Zmeyevskiy added: It is not only a question of the NPT; indeed, the NPT is not mentioned. What is important (to eligibility) is the imposition of Agency safeguards.

Australia (First Secretary Ada Cheung):

The issue is indeed Agency Safeguards. Our experts ask about making the Additional Protocol a condition of supply.

Berdennikov: A very good idea; we would be very happy with this criterion, but it would exclude many countries and under present circumstances is pre-mature.

New Zealand (Ambassador Macmillan):

-- Proposal refers to "most recent IAEA safety standards. How will Agency enforce this requirement if the recipient country has not signed up to a formal obligation?

-- How is liability covered (answered above).

Berdennikov:

DG will determine if a requesting state has the capability to receive material on conformance with the criteria intrinsic to the agreements/mechanism. Russia "won't have a say; this was difficult for us," but the aim is that the decision to supply lies with the "international community" represented by the IAEA DG.

Uruguay (Ambassador Barros Oreiro):

-- We support this effort, we agree the BoG should decide this, we favor a consensus decision. We are facing an election at home at the end of this month between "two different ways of looking at the world"; hence, we need more time to decide on this matter and cannot co-sponsor at this time.

-- We would not block a consensus of all other Board members if it emerges but otherwise ask to wait until March 2010 Board. (Comment: After the meeting, Russian Ambassador Zmeyevskiy indicated to us his expectation that Uruguay can be won over to co-sponsorship if 18 or nearly 18 co-sponsors were already enlisted. We are inclined to think so, too. End Comment.)

Turkey (Ambassador Bayer):

-- GOT attaches great importance to the establishment of mechanisms for fuel assurance. The Russian proposal is very practical; we have an open mind about it. We favor a consensus decision. We ave conveyed the draft agreements to capital and to our Governor and will convey any questions we get from Ankara to the Russian side.

Japan again:

-- We also would like very much for the decision to be by consensus. Will Russia notify Angarsk as an "eligible facility" for safeguards verification?

Berdennikov: We will work with the Agency to put safeguards in place there and pay for the safguards arrangements.

United Kingdom (Ambassador Smith):

-- We support the proposal and the position that we need to progress and change the handling of the fuel assurance issue. Also conscious that a range of concepts exist and want to ensure that the manner of adopting Russia's proposal makes it clear we are stepping into further progress on other mechanisms as well. The UK can help recruit co-sponsors "if we can say this (proposal's adoption) helps bring other concepts to the Board." (all in the room who subsequently spoke joined in this point.) (Note: Smith proposed preambular language for encouraging other proposals, and the Russians used his input in the resolution text circulated later on November 20 and repeated in reftels. End Note.)

France (DCM Philippe Merlin):

-- Conscious of DG ElBaradei's concern over a "divided Board" but agree that very few states are fundamentally opposed to the Russian proposal. Could further elaboration relating the proposal to advancing states' rights under Article IV of the NPT be included?

-- Would also welcome more explicit language in the resolution preamble affirming that the mechanism is "market compatible" and that "release criteria" for LEU are consistent with the prevailing export control regime (while recognizing that the phrase "export control regime."

-- Will encourage Paris to co-sponsor. (Note: Russians had told us French IAEA Governor Mondoloni had agreed on co-sponsorship when approached in Paris and was to have the French Mission so instructed; this apparently had not yet happened. End Note.)

Germany (Ambassador Luedeking):

-- Article 2 of Russian draft agreement "carefully hedges" and uses NPT guidelines; Luedeking acknowledged that Russian could not get the IAEA to use the phrases "NPT" or "export control." Germany would still like assurance that only NPT member states meeting Nuclear Suppliers Group (NSG) guidelines will be eligible.

-- In the resulting give-and-take with Berdennikov following an intervention by Canada (below), Luedeking asked specifically if India, Pakistan and Israel would be eligible to receive Russian-sourced LEU through this mechanism.

Berdennikov:

-- Russian law is consistent with the NSG, but the IAEA is not an NSG member. Russia began from the position of citing the NPT.

-- Pakistan and Israel are "out," Iran is "out" until it is "cleared" of its safeguards non-compliance. India requires

more complex interpretation, as in the context of the NSG it has drawn a clear line between military and peaceful nuclear activities and committed to put all peaceful activities under safeguards.

-- The difference between Pakistan and India in this case is that Pakistan has no NSG exception "and will not get one."

-- The IAEA Secretariat knows that interpretation of the agreement consistent with Russian export control law is intended.

Romania (Ambassador Feruta):

-- It is "healthy" that Russia wants to start from the premise of consensus approval. Will query Bucharest on co-sponsorship.

-- Want to avoid dividing the Board. What will you do if you achieve a critical mass of eighteen or more co-sponsors but there is still not signal of consensus?

Berdennikov:

-- The co-sponsors will have to decide (if we proceed to a vote). The Russian position in that deliberation would be that the project should not be "taken hostage" if only a small number of states hold out. "Let's apply the Rules of Procedure" (i.e., call a vote). But our hope is that opponents will not stand in the way of active majority support.

Canada (Ambassador Barrett):

-- We had questions on relating eligibility to NPT membership and comprehensive safeguards. We have been instructed to support the agreement's adoption and will seek instruction on co-sponsorship.

Berdennikov:

-- We agreed on the formulations you see because for us "full scope safeguards" is an IAEA parlance with the same practical meaning as NPT adherence.

Spain (Ambassador Serra):

-- Endorsed all ideas suggested around the table for using the resolution to endorse progress on other proposals and clarify eligibility. Expected no problem for Spain to co-sponsor.

Denmark (Ambassador Bernhard):

-- Agreed with Spain; would seek instruction on co-sponsorship.

Netherlands (DCM van Deelen):

-- Wants to see progress on fuel assurance and will seek instruction on co-sponsorship. Still has reservations on eligibility criteria and the NSG "that can be sorted out." (Note: Privately, van Deelen expressed concern to us that the absence of a firm link to the NPT or NSG remains a vulnerability for a future DG to come under pressure to transfer LEU to states we all, including Russia, do not intend today to be eligible. End Note.)

Asked then in rapid succession if eighteen co-sponsorships were attainable and where Egypt stood, Berdennikov and Zmeyevskiy estimated 18 to 20 co-sponsors could be reached if we all worked together. Egypt, Berdennikov said, one could "add to the Gang of Four," meaning the implacable opponents. Here Zmeyevskiy specified that Russia sought co-sponsors' signatures on a piece of paper by Tuesday, November 24.

Switzerland (Ambassador Marfurt):

-- Switzerland fully supports that the proposal succeed. (To become a co-sponsor), I will have to persuade my capital that the agreement texts cannot be changed further, specifically on eligibility criteria and in defining what is or is not a triggering "disruption of supply" as well as whether disputes over the timing or a first delivery of fuel may be interpretable as a politically-motivated trigger event.

¶ 9. (C) Tom conclude the Friday discussion, Ambassador Davies appealed to Western colleagues not to make the perfect the enemy of the good. Russia was proposing an elegant procedural way forward to demonstrate the support is there to respond to the DG's call for a fuel assurance mechanism. It was important in the current Vienna context to have a success and to do so in a manner paving the way for other proposals. UK Ambassador Smith agreed, calling on colleagues not to be "squeamish" about divisions in the Board.

¶ 10. (SBU) In a separate November 16 discussion with Indian Charge Patniak, DCM explored GOI interntions on this issue -- bearing in mind India's role leading the charge against the Russian proposal at the June meeting of the Board. While acknowledging our point that India is a fuel cycle country that would never use one of these back-up arrangements, Patniak recounted India's objection that the Russian proposal brings an NPT criterion that reinforces a secondary status unacceptable to New Delhi. That said, Patniak noted India had been demarched hard by Moscow "and will not vote against" Russia. More likely, he indicated, India would abstain on the Russian initiative and issue a BoG statement disassociating itself from the decision (if positive).

¶ 11. (SBU) As reported ref A, the Russian Mission subsequently on November 20 circulated its resolution draft to all states invited to the two briefings. UNVIE thanks the Department for the subsequent release of ref B and looks forward to responses from the field.

DAVIES